



Office of the Attorney General
State of Texas

June 23, 1993

DAN MORALES

ATTORNEY GENERAL

Ms. Alana Marie Holmes
Staff Attorney
Texas Water Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR93-349

Dear Ms. Holmes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20062.

The Texas Water Commission (the "commission") has received a request for a copy of an affidavit acquired during an investigation into a personnel matter involving allegations of racism and sexual harassment. You have submitted the requested document to us for review and claim that it is excepted from required public disclosure by sections 3(a)(1) and 3(a)(3) of the Open Records Act.

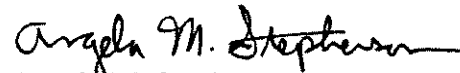
To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You advise us that the requested information relates to an action filed against the commission with the Texas Commission on Human Rights. We conclude, therefore, that you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 3(a)(3). Cf. Open Records Decision No. 386 (pendency of complaint before the Equal Employment Opportunity Commission indicates reasonable likelihood of litigation). The requested record may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the

requestor pursuant to section 3(a)(3). We also note that the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,


Angela M. Stepherson
Assistant Attorney General
Opinion Committee

AMS/GCK/jmn

Ref: ID# 20062

cc: Ms. Juanita Qualls
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